

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-11-1-5-00006  
45-004-12-1-5-00032  
45-004-13-1-5-00795-16  
45-004-14-1-5-00793-16  
45-004-15-1-5-01005-16  
**Petitioner:** Elkhart Rentals, LLC/Chris Schaap<sup>1</sup>  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-07-384-001.000-004  
**Assessment Years:** 2011-2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated the 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on June 11, 2012, and the 2012 appeal on January 29, 2013. The PTABOA issued notice of its final determination for 2011 on October 1, 2014, and for 2012 on September 12, 2014. Petitioner then timely filed its Form 131 petitions with the Board.
2. Petitioner initiated the 2013 appeal on May 22, 2014, the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For all three years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on June 13, 2016. Neither the ALJ nor the Board inspected the property.

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<sup>1</sup> The 2011 and 2012 appeals were filed by Chris Schaap for Elkhart Rentals, LLC. The 2013-2015 appeals were filed by Chris Schaap.

5. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Henry Bennett, Jr., Calumet Township Deputy Assessor, were sworn as witnesses for Respondent.

**Facts**

6. The subject property is a single-family dwelling located at 3925 W. 19<sup>th</sup> Place in Gary.
7. Respondent determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2011	\$4,800	\$29,500	\$34,300
2012	\$4,800	\$30,400	\$35,200
2013	\$4,800	\$31,600	\$36,400
2014	\$4,800	\$30,800	\$35,600
2015	\$4,800	\$31,100	\$35,900

8. Petitioner requested the following assessed values:

Year	Total
2011	\$16,400
2012	\$13,940
2013	\$11,152
2014	\$ 8,922
2015	\$ 7,137

**Record**

9. The official record contains the following:
  - a. A digital recording of the hearing
  - b. Exhibits:

Petitioner Exhibit 1:  
 Petitioner Exhibit 2:

Appraisal by Roy Gouwens  
 2011 property record card (“PRC”)

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Petitioner Exhibit 3:	2012 PRC
Petitioner Exhibit 4:	2013 PRC
Petitioner Exhibit 5:	2014 PRC
Petitioner Exhibit 6:	2015 PRC
Respondent Exhibit 1:	Appraisal by Roy Gouwens
Board Exhibit A:	Form 131 petitions
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).
12. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

14. The assessed value decreased from \$38,600 in 2010 to \$34,300 in 2011. Petitioner, therefore, has the burden of proof for 2011. Assigning the burden for the other years at issue will depend on the final determinations for each respective preceding year.

### Summary of Parties' Contentions

15. Petitioner's case:
- a. Petitioner contends that the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). While Mr. Gouwens considered all three approaches to valuation, he neither developed the cost approach nor the income approach. Mr. Gouwens ultimately afforded the most weight to the sales comparison approach and estimated a value of \$20,000 as of March 1, 2010. He did not value the property as of the assessment date under appeal because Petitioner requested an estimated value as of March 1, 2010, believing that was the date required for the appeal. *Schaap testimony; Pet'r Ex. 1.*
  - b. In an attempt to trend the 2010 appraised value to the 2011 valuation date, Petitioner applied the market adjustment value of .82 shown on the 2011 PRC. Applying the .82 value to the \$20,000 appraisal estimate results in a proposed assessed value of \$16,400 for 2011. *Schaap testimony; Pet'r. Ex. 2.*
  - c. For 2012, the market adjustment value was .85. Applying the .85 value to the 2011 value of \$16,400 results in a proposed assessed value of \$13,940 for 2012. *Schaap testimony; Pet'r Ex. 3.*
  - d. For 2013, the market adjustment value was .80. Applying the .80 factor to the 2012 value of \$13,940 results in a proposed assessed value of \$11,152 for 2013. *Schaap testimony; Pet'r Ex. 4.*
  - e. For 2014, the market adjustment value was .80. Applying the .80 factor to the 2013 value of \$11,152 results in a proposed assessed value of \$8,922 for 2014. *Schaap testimony; Pet'r Ex. 5.*
  - f. For 2015, the market adjustment value was .80. Applying the .80 factor to the 2014 value of \$8,922 results in a proposed assessed value of \$7,137 for 2015. *Schaap testimony; Pet'r Ex. 6.*
16. Respondent's case:
- a. Mr. Metz testified that the \$20,000 appraised value as of March 1, 2010, is an appropriate value for the 2011 assessment date. As an alternative to the original assessed values, Mr. Metz stated that Respondent would accept the \$20,000 appraised

value for 2011 and trend that value upward by 2.5% for years 2012 through 2015.<sup>2</sup>  
*Metz testimony.*

- b. Respondent notes that Petitioner applied the market adjustments on the PRCs to arrive at his values. Respondent contends that those market adjustments are related to the cost approach performed by Calumet Township as opposed to market value. *Metz testimony.*

#### ANALYSIS

17. The Board finds that the assessed values should be reduced for each year at issue and it reached that decision for the following reasons:
  - a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
  - c. There is a separate statute, however, regarding the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the gross rent multiplier (“GRM”) method “is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units...”. In this case, neither party attempted to calculate a valuation under the GRM method. Consequently, the Board next turns to the parties’ specific proposals for the years at issue.

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<sup>2</sup> During his testimony, Mr. Metz referenced the 2.5% trending factor on multiple occasions. However, on one occasion, he indicated a trending factor of 2%. The Board notes that this discrepancy has no effect on the outcome of the appeals.

### 2011 Assessment

- a. As stated above, Petitioner had the burden of proof for 2011. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the subject property at \$20,000 as of March 1, 2010. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property's true tax value.
- b. Petitioner, however, requested a value of \$16,400 for 2011. To arrive at that figure, Petitioner contends that the appraised value should be trended to the March 1, 2011, valuation date. Petitioner attempted to trend the appraised value to the 2011 valuation date by applying the market adjustment value of .82 shown on the 2011 PRC.
- c. While the market adjustment value appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that factor in this case is not reflective of the overall annual trending factor for 2011 because the total assessed value decreased at a lower rate from 2010 to 2011. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessed value. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995). Therefore, Petitioner's calculation is not probative evidence for a change in the appraised value.
- d. Respondent, on the other hand, agreed to accept the 2010 effective date of the appraisal for the 2011 valuation and agreed to accept an assessed value of \$20,000 for 2011. Therefore, the Board finds that the 2011 assessed value will be changed to \$20,000.

### 2012-2015 Assessments

- a. As will be discussed below, the Board ultimately finds that the assessed values for years 2012 – 2015 will also each be changed to \$20,000. Because the original assessed value for each of those years represents an increase from each respective previous year's value of \$20,000, Respondent has the burden of proving that the assessed values for 2012 – 2015 are correct.
- b. Respondent did not offer any evidence to prove that the original assessed values for 2012 – 2015 are correct. In the alternative for 2012 – 2015, beginning with the \$20,000 value for 2011, Respondent proposed to trend each year thereafter upward by 2.5% from each respective preceding year.

- c. Respondent, however, did not present any evidence to substantiate the 2.5% factor for 2012 – 2015. Furthermore, Respondent did not present any proposed final values for those years. As discussed previously, statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination.
- d. As was the case for 2011, Petitioner contends that the values for 2012 – 2015 should each be trended forward using the market adjustment value found on each respective PRC. For the same reasons that were discussed with regard to Petitioner’s 2011 proposed value, the Board finds that Petitioner similarly did not provide credible evidence to support its proposed values for 2012 – 2015.
- e. If an assessor fails to meet its burden and neither party offers probative evidence to show the property’s actual true tax value, the assessment reverts to the previous year’s level. Ind. Code § 6-1.1-15-17.2(b). Accordingly, the Board finds that the 2012 – 2015 assessed values should each be changed to \$20,000.

### **CONCLUSION**

- 18. While the GRM method is the preferred method for this type of rental property, in this case, neither party attempted to calculate a valuation under the GRM method. With regard to the parties’ proposed values for the years at issue, Petitioner had the burden of proof for 2011 and provided a USPAP compliant appraisal, with an effective date of March 1, 2010, valuing the property at \$20,000. Petitioner, however, requested a lower value for 2011, but failed to provide probative evidence in support of that value. Respondent, on the other hand, agreed to accept the \$20,000 value for 2011. Respondent ultimately had the burden of proof for 2012 – 2015 and failed to provide probative evidence for its proposed values for those years. Petitioner provided its own proposed values for 2012 – 2015 and similarly failed to provide credible evidence. As a result, the assessed values for 2012 – 2015 each revert to the respective previous year’s value.

### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed values for 2011, 2012, 2013, 2014, and 2015 must each be changed to \$20,000.

ISSUED: October 12, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.